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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/685,850 10/10/00 PEFFLY

M 8287

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EXAMINER

BENNETT, R

ART UNIT

PAPER NUMBER

1615

DATE MAILED:

02/23/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

09/685,850

Applicant(s)

PEFFLY ET AL.

Examiner

Rachel M. Bennett

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-69 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-69 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_.

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### DETAILED ACTION

1. Examiner acknowledges receipt of Information Disclosure Statement filed 1/16/01.

#### *Specification*

#### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-12, 21-32, 41, 47, 49, 53-60, 62-69 are rejected under 35 U.S.C. 102(b) as being anticipated by Yoshihara et al. (US 4940578).

Yoshihara discloses a hair preparation comprising an oil-absorptive substance and an anti-dandruff agent (see abstract). The base of the hair preparation is a mixture of water and ethanol (see col. 6 lines 20-26). The anti-dandruff agent is zinc pyrithione (see col. 8 and examples). The hair preparation may also contain other ordinary components in such amounts that they do not damage the effect of the preparation. The components include surfactants, humectants, and vitamins (see col. 6 lines 36-46 and col. 10 lines 54-58). The scalp lotion is applied after shampooing and drying the scalp with a towel (see col. 12 lines 63-68 and col. 13 lines 1-7). Therefore these claims are anticipated.

4. Claims 13, 19, 20, 33, 39, 40, and 50 are rejected under 35 U.S.C. 102(b) as being anticipated by Kashibuchi et al. (US 5565207).

Kashibuchi discloses a scalp moisturizer comprising an active ingredient (see abstract). The moisturizer may contain additional active ingredients such as zinc pyrithione, menthols,

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surfactants, allantoin, vitamin E. Humectants may also be included (see col. 6). Therefore these claims are anticipated.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-12, 15-18, 21-32, 35-38, 47, 49, 51, 52, 53-60, 61, 62-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshihara et al. (US 4940578).

Yoshihara, as disclosed above, teaches a scalp lotion. Yoshihara is deficient in the sense that this reference fails to teach the combination of all the above elements combined in a specific example.

It is the position of the examiner that it would be obvious to one of ordinary skill in this art, at the time of invention, by routine experimentation, to combine the elements taught by the reference into one composition, determining the preferred amount of each component as desired by applicant to achieve the desired results. The reference desires a scalp composition comprising an anti-dandruff agent. The expected result would be a scalp composition comprising ethanol, zinc pyrithione and a humectant.

7. Claims 13, 19, 20, 33, 39, 40, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kashibuchi et al. (US 5565207).

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Kashibuchi as discloses above, teaches a scalp moisturizer. Kashibuchi is deficient in the since that this reference fails to teach the combination of all the above elements combined in a specific example.

It is the position of the examiner that it would be obvious to one of ordinary skill in this art, at the time of invention, by routine experimentation, to combine the elements taught by the reference into one composition, determining the preferred amount of each component as desired by applicant to achieve the desired results. The reference desires a scalp composition comprising an allantoin, vitamin E and menthol. The expected result would be a composition comprising an active ingredient to be applied to the scalp.

8. Claims 14, 34, 48, are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshihara et al. (US 4940578) and further in view of McKay (US 5325878).

Yoshihara, as disclosed above, teaches a scalp composition. Yoshihara does not teach the composition be contained in an applicator. McKay is relied on for the teaching of an applicator comprising a matrix comprising a hair agent (see abstract and figures).

It is the position of the examiner that it would have been obvious to one of ordinary skill in this art at the time of invention to use the teachings of McKay with regard to using an applicator to apply a composition to the scalp in the teachings of Yoshihara because McKay teaches a hair composition as in Yoshihara. Both Yoshihara and McKay desire the composition to be applied to the hair and scalp. The expected result would be an applicator comprising a scalp composition.

9. Claims 41-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshihara et al. (US 4940578) and McKay and in further in view of Kellett et al. (US 5002075).

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Yoshihara, as disclosed above, teaches a scalp composition. McKay as disclosed above, teaches a fluid-dispensing comb to apply a composition. Yoshihara does not teach an insecticidal agent in the composition. Kellett is relied on for the teaching of an applicator comprising a matrix comprising a hair-conditioning agent, specifically an insecticidal agent (see col. 13) and a surfactant (see abstract and figures).

It is the position of the examiner that it would have been obvious to one of ordinary skill in this art at the time of invention to use the teachings of Kellett with regard to using an insecticidal agent in a scalp composition in the teachings of Yoshihara and McKay because Kellett teaches a hair composition applied with an applicator as in Yoshihara and McKay. The expected result would be an applicator comprising a scalp composition for treating fleas and ticks.

### *Correspondence*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rachel M. Bennett whose telephone number is (703) 308-8779. The examiner can normally be reached on Monday through Friday, 8:00 A.M. to 4:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on (703) 308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3592 for regular communications and (703) 309-7924 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

THURMAN K. PAGE  
SUPERVISOR  
RECEIVED EXAMINER  
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